



## Report to the Auburn City Council

Action Item

Agenda Item No.

City Manager's Approval

**To:** Mayor and City Council Members

**From:** Jack Warren, Director of Public Works/City Engineer

**By:** Bernie Schroeder, Engineering Division Manager

**Date:** February 23, 2009

**Subject:** Consultant Agreement for Wastewater Consulting

### The Issue

Shall the Council authorize a consultant agreement to NexGen Utility Management, Inc. for Wastewater Consulting?

### Conclusions and Recommendation

Staff recommends that the City Council, by **RESOLUTION**, authorizes the Director of Public Works to execute the consultant agreement with NexGen Utility Management for Wastewater Consulting.

### Background

In August 2008, the Council authorized a consultant agreement with NexGen Utility Management, Inc. (NexGen) to continue working on implementing the Sanitary Sewer Management Plan. NexGen completed the tasks within that contract.

In October 2007, the Council adopted the City of Auburn's Sewer System Management Plan (SSMP) and the Pollution Prevention Plan (PPP). The SSMPP is a new mandate required under the States' Waste Discharge Requirements for the operation of its sewer collection system. The PPP was required under the City's current National Pollutant Discharge Elimination System (NPDES) permit.

On October 27, 2008, the Council awarded the construction contract to BRC Construction for the Vintage Oaks Lift Station Upgrade Project. The project is under construction currently. In July 2008, the Council awarded a consultant agreement with NexGen Utility Management for design engineering services for the Vintage Oaks Lift Station Upgrade Project. The design engineering agreement did not include assistance once the project was awarded and under construction.

The consultant agreement with NexGen Utility Management, Inc. is split between three main tasks:

- Task 1: Construction Assistance for Vintage Oaks Lift Station Upgrade Project
  - Construction Assistance
- Task 2: National Pollutant Discharge Elimination System (NPDES) Permit Assistance
  - WWTP Compliance Approach for Trace Pollutants
  - SRF Loan Package
  - Healthy Auburn Waters Program
- Task 3: Implementation of the City's Sanitary Sewer System Management Plan
  - Condition Assessment of Sewer Lines

- System Inventory Data Gaps
- Develop a sewer ranking for maintenance

Detailed descriptions of each task are included as part of the professional service agreement.

**Alternatives Available to Council; Implications of Alternatives**

1. Proceed with the staff recommendation.
2. Do not proceed with staff recommendation.

**Fiscal Impact**

The cost to complete the three tasks incorporated into the agreement total \$133,290 which was included in the preparation of the proposed 2008-09 City of Auburn Operating Budget. The Sewer Enterprise Fund included adequate funding for this consultant contract as professional services for Tasks 2 & 3. For Task 1 the Sewer Budget reflects adequate funding in the capital project – Lower Vintage Oaks Lift Station Upgrade.

Attachments:     Consultant Agreement  
                         Resolution

**PROFESSIONAL SERVICES AGREEMENT**  
(City of Auburn / NexGen Utility Management.)

**1. IDENTIFICATION**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between the City of Auburn a California municipal corporation ("City") and NexGen Utility Management, Inc. a *California, Corporation* ("Consultant").

**2. RECITALS**

- 2.1 City has determined that it requires the following professional services from a consultant for the Wastewater Consulting.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

**3. DEFINITIONS**

- 3.1 "Scope of Services": Such professional services as are set forth in Consultant's January 28, 2009 proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2 "Approved Fee Schedule": Such compensation rates as are set forth in Consultant's January 28, 2009 fee schedule to City attached hereto as Exhibit Band incorporated herein by this reference.
- 3.3 "Commencement Date": February 24, 2009.
- 3.4 "Expiration Date": February 24, 2010.

**4. TERM**

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 17 ("Termination") below.

**5. CONSULTANT'S SERVICES**

- 5.1 Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any

such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of One Hundred Thirty Three Thousand Two Hundred Ninety Dollars (\$133,290) unless specifically approved in advance and in writing by City.

- 5.2 Consultant shall obtain a City business license prior to commencing performance under this Agreement.
- 5.3 Consultant shall perform all work to the highest professional standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.4 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.5 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. **Dan Rich** shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.

## 6. COMPENSATION

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the Approved Fee Schedule.
- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. City shall not withhold applicable taxes or other authorized deductions from payments made to Consultant.

- 6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a time-and-materials basis using Consultant's standard fee schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule.

**7. OWNERSHIP OF WRITTEN PRODUCTS**

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

**8. RELATIONSHIP OF PARTIES**

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

**9. CONFIDENTIALITY**

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

**10. INDEMNIFICATION**

- 10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.

- 10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 10.3 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.4 The obligations of Consultant under this Section 10 are not limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- 10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 10.6 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

## **11. INSURANCE**

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:
  - 11.1.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
  - 11.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
  - 11.1.3 Worker's Compensation insurance as required by the laws of the State of California.
  - 11.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).
- 11.2 Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.
- 11.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.4 Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium thereon at Consultant's expense.
- 11.5 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Consultant shall, prior to commencement of work under this Agreement, file with City's Risk Manager such certificate(s).

- 11.6 Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- 11.7 The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 11.8 The insurance provided by Consultant shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 11.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.
- 11.10 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond in the amount of the deductible or self-insured retention to guarantee payment of losses and expenses.
- 11.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

## **12. MUTUAL COOPERATION**

- 12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.
- 12.2 In the event any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.



**13. RECORDS AND INSPECTIONS**

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

**14. PERMITS AND APPROVALS**

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

**15. NOTICES**

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City

City of Auburn  
1225 Lincoln Way  
Auburn CA 95603  
Telephone: (530) 823-4211 x\_\_\_\_  
Facsimile: (530) 823-4216

If to Consultant:

*NexGen Utility Management*  
*C/O Dan Rich*  
*2150 River Plaza Drive, Ste 345*  
*Sacramento, CA 95833*  
Telephone: (916) 564-8005  
Facsimile: (888) 820-8880

With courtesy copy to:

Michael G. Colantuono, Esq.  
Auburn City Attorney  
Colantuono, Levin & Rozell, APC  
11406 Pleasant Valley Road  
Penn Valley, CA 95946-9024  
Telephone: (530) 432-7359  
Facsimile: (530) 432-7356

**16. SURVIVING COVENANTS**

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

**17. TERMINATION**

17.1. City shall have the right to terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant shall have the right to terminate this Agreement for any reason on thirty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.

17.2 If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

**18. GENERAL PROVISIONS**

18.1 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.

18.2 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.

18.3 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).

18.4 The waiver by City or Consultant of any breach of any term, covenant or

condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.

- 18.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 18.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. In the event legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be Placer County, California and Consultant hereby consents to jurisdiction in Placer County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 18.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 18.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written

agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Consultant.

**TO EFFECTUATE THIS AGREEMENT**, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

**"City"**  
City of Auburn

**"Consultant"**  
NexGen Utility Management

By \_\_\_\_\_

By: \_\_\_\_\_  
*Name, Level of Officer e.g., Vice President*

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
*Name, Level of Officer e.g., Vice President*

Date: \_\_\_\_\_

Attest:

By \_\_\_\_\_  
Deputy City Clerk

Date: \_\_\_\_\_

Approved as to Form:

By \_\_\_\_\_  
City Attorney

Date: \_\_\_\_\_

## EXHIBIT A SCOPE OF WORK

### Task 1: Lower Vintage Oaks Upgrade Project

#### **Contract Amendment No.1 Scope of Work Construction Phase Services for the City of Auburn Lower Vintage Oaks Lift Station Upgrade Project**

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##### **Overview**

In 2008, NEXGEN Utility Management prepared Plans and Specifications for various upgrades of the Lower and Upper Vintage Oaks Lift Stations. The project was bid and awarded to BRC Construction in October. Construction will occur over the next 6 months and be completed in late Spring of 2009. NEXGEN's contract with the City covered Task 1- Project Planning, and Task 2- Final Design. Proposed scope and fee for Task 3- Construction Phase Services is described below.

##### **Task 3 Scope of Services**

Consultant will provide professional construction phase services as specifically stated below:

*Bid Document Preparation and Contractor Notification.* Consultant will issue bid packages for the submittal of quotations to perform the work and conduct pre-bid meetings with potential bidders. We will prepare necessary addendum in response to contractor questions. We will tabulate the bids received and evaluate the compliance of the bids received with the bidding documents. We will prepare a written summary of this tabulation and evaluation. If requested by the Client, Consultant will notify the selected Contractor.

*Pre-Construction Conference.* Consultant will conduct a Pre-Construction Conference prior to commencement of Work at the Site.

*Visits to Site and Observation of Construction.* Consultant will provide on-site construction observation services during the construction phase. Consultant will make visits at intervals as directed by Client in order to observe the progress of the Work. Such visits and observations by Consultant are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the Work based on Consultant's exercise of professional judgment. Based on information obtained during such visits and such observations, Consultant will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents, and Consultant will keep Client informed of the general progress of the Work.

The purpose of Consultant's site visits will be to enable Consultant to better carry out the duties and responsibilities specifically assigned in this Agreement to Consultant, and to provide Client a greater degree of confidence that the completed Work will conform in general to the Contract Documents. Consultant shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall Consultant have authority over or responsibility for the means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction selected by

Contractor, for safety precautions and programs incident to Contractor's work, nor for any failure of Contractor to comply with laws and regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Consultant neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

*Recommendations with Respect to Defective Work.* Consultant will recommend to Client that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, Consultant believes that such work will not produce a completed Project that conforms generally to Contract Documents.

*Clarifications and Interpretations.* Consultant will respond to reasonable and appropriate Contractor requests for information and issue necessary clarifications and interpretations of the Contract Documents to Client as appropriate to the orderly completion of Contractor's work. Any orders authorizing variations from the Contract Documents will be made by Client.

*Change Orders.* Consultant may recommend Change Orders to Client, and will review and make recommendations related to Change Orders submitted or proposed by the Contractor.

*Shop Drawings and Samples.* Consultant will review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs.

*Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor in accordance with the Contract Documents, but subject to the provisions of applicable standards of state or local government entities.

*Inspections and Tests.* Consultant may require special inspections or tests of Contractor's work as Consultant deems appropriate, and may receive and review certificates of inspections within Consultant's area of responsibility or of tests and approvals required by laws and regulations or the Contract Documents. Consultant's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Consultant shall be entitled to rely on the results of such tests and the facts being certified.

*Disagreements between Client and Contractor.* Consultant will, if requested by Client, render written decision on all claims of Client and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the progress of Contractor's work. In rendering such decisions, Consultant shall be fair and not show partiality to Client or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

*Substantial Completion.* Consultant will, promptly after notice from Contractor that it considers the entire Work ready for its intended use, in company with Client and Contractor, conduct a site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception of those

identified on a final punch list. If after considering any objections of Client, Consultant considers the Work substantially complete, Consultant will notify Client and Contractor.

*Final Notice of Acceptability of the Work.* Consultant will conduct a final site visit to determine if the completed Work of Contractor is generally in accordance with the Contract Documents and the final punch list so that Consultant may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Consultant shall also provide a notice that the Work is generally in accordance with the Contract Documents to the best of Consultant's knowledge, information, and belief based on the extent of its services and based upon information provided to Consultant upon which it is entitled to rely.

*Limitation of Responsibilities.* Consultant shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the Work. Consultant shall not have the authority or responsibility to stop the work of any Contractor.

*Production of Record Drawings.* Consultant shall collect as-built information from the City and Contractor and prepare project record drawings. Any boundary surveying is not included in this task. If the City conducts a survey, this information will be included as well. Consultant shall reproduce 4 full size sets of record drawings, 4 11x17 sets, and a CD with the drawings in *AutoCAD* and *.PDF* format.

Task 2: NPDES Permitting Tasks 2009

**Contract Amendment No.1**  
**Scope of Work**  
**NPDES Permitting Tasks 2009**

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**Overview**

In 2008, NEXGEN Utility Management conducted various studies in support of the City's NPDES permit compliance and renewal. Activities in the past included preparation of the Report of Waste Discharge application, lime feed system design and pricing, development of revised metal limits, and assessment of nitrogen removal compliance. In 2009, the City is reopening the permit to relax several of permit limits and will be finalizing the design of various upgrades to the plant. This amendment addresses various activities in support of the near-term WWTP compliance activities. This amendment does not address preparing the actual Report of Waste Discharge for the City's 2010 permit renewal, which would likely occur in the Fall of 2009.

**Scope of Work**

Our permitting activities have included the following tasks:

**Task 1- Determine WWTP Compliance Approach for Trace Pollutants**

This task is envisioned to include the following activities:

- √ Assist the City in assessing limits for aluminum, nitrate, and other trace metals of concern including copper, lead, and zinc identified in the proposed renewed permit.
- √ Attend meetings/hearings with the Regional Board on the re-opened permit
- √ New lime feed system review start up and, if necessary, limited electrical engineering assistance.
- √ Determine compliance approach for the new ammonia-nitrogen limits expected in the new permit
- √ Prepare semi-annual compliance progress reports required by the current permit.
- √ Attend necessary meetings with Staff to assess WWTP compliance

**Task 2- Prepare State Revolving Loan Package**

The City may want to apply for low interest loans and/or grants expected in the State Water Resources Control Board's Economic Stimulus Package for "shovel ready" projects such as the WWTP upgrade. We will prepare the application package and certain supporting information required by the State Revolving Loan (SRF).

The City must submit planning and financial documents to obtain funding for the upgrade project. The documents include a Project Report, complete Environmental Documents, Water



Conservation requirement compliance documents, and credit analysis documents. The SWRCB has proposed streamlining the requirements for the environmental documents and water conservation requirements to expedite the funding commitments in 2009.

We will prepare the SRF application and Project Report. Per the SRF 2008 Guidelines, the Project Report must contain, as appropriate, the following:

- ✓ A statement of Project needs and benefits, including a discussion of the water quality benefits of the Project and the public health or water quality problems to be corrected.
- ✓ A description of the proposed Project Service Area and composition.
- ✓ A cost effectiveness and climate change evaluation of alternatives over the useful life of the Project. The evaluations presented must include an evaluation of the alternative of upgrading operation and maintenance of the existing facility to improve effluent quality, and a regional treatment solution.
- ✓ An evaluation of alternative methods for reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process.
- ✓ An evaluation of the non-existence or possible existence of excessive infiltration/inflow (I/I) in the existing sewer system. 6. Information on total capital costs, annual operation and maintenance costs.
- ✓ A discussion of the existing population, flows, loadings, and projections of the same, used to estimate the capacity needs for the funded facilities;
- ✓ A discussion of the anticipated eligible capacity for the Project, and how that capacity was derived.
- ✓ A summary of public participation
- ✓ A detailed description of the selected alternative and applicable design criteria
- ✓ The estimated construction and annual operation and maintenance costs and a description of the anticipated manner in which all the costs will be financed.
- ✓ A summary of the cost impacts on wastewater system users.
- ✓ A summary of the significant environmental impacts of the selected Project and any proposed mitigation measures.

It is likely that this report could be used as supporting information for other conventional loan programs if the SRF program becomes overcommitted.

### **Task 3- Activities to Expand Healthy Auburn Waters Program**

In 2008, the City initiated its Healthy Auburn Waters (HAW) Program. The HAW program included various public outreach and educational activities related to both stormwater and wastewater and their effect on the local streams. The past activities included development of a website, creating public announcements, attending various community events, and a drug take back program. The HAW program is the City's compliance strategy for various pollutants that are better removed at the source instead of at the WWTP.

The 2009 activities will continue in a similar manner but with the following enhancements:

#### **Website [www.HealthyAuburnWaters.org](http://www.HealthyAuburnWaters.org)**

- ✓ Build up the website so the public has more reasons to visit for information about HHW and pollution prevention, to feel more connected to their community (Web 2.0 tools) and to find new resources.

- ✓ Add more information and graphics about rainfall history, concerns and “Be Storm Water Smart” check list
- ✓ Locate and add multimedia links about storm water and water pollution
- ✓ Add weather widget
- ✓ Add a “community connection” with photos, articles, etc.
- ✓ Add Web 2.0 elements to help the public identify with city staff and community leaders who are keeping waterways healthy (podcast interview, blog, twitter, etc.)
- ✓ Add a home survey and a business survey for storm season readiness and hazardous waste storage and disposal safety.

**Business Outreach**

- ✓ Continue to encourage sign-ups for the “We Pledge” program.
- ✓ At least one direct mail
- ✓ Interview businesses and add to podcast library
- ✓ Create and place ads that recognize area businesses and reinforce Healthy Auburn Waters

**Public Outreach**

- ✓ Distribute 2 inserts in ADPS billing statements that reach all city residents.
- ✓ String overhead banner on roadway for appropriate events
- ✓ Attend 2-3 public events to hand out materials and recognize businesses who have taken the pledge. Options include:
  - ✓ Family night out
  - ✓ Gold Country Fair
  - ✓ Harvest Festival
  - ✓ Mandarin festival
  - ✓ Sponsor one other major fund-raising event in the city
  - ✓ Medical waste Collection Event (unique event in October)

**Media Outreach**

- ✓ Issue news releases as appropriate
- ✓ Write editorial comments for the Auburn Journal
- ✓ Advertisements
- ✓ PSAs for print, web and cable TV

**School Outreach**

- ✓ Provide schools with activity packets and standards-aligned curricula that address watershed protection, pollution prevention and water quality. This outreach will involve at least one meeting with the district curriculum coordinator for the elementary district and the high school to develop an implementable program.

**“I Pledge” Community Program**

- ✓ Expand the “We Pledge” program to allow individuals to take the pledge.
- ✓ Develop home inventory and check-off list

Task 3:SSMP Implementation

**Contract Amendment No.1**  
**Scope of Work**  
**SSMP Implementation**

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**Overview**

In 2008, NEXGEN Utility Management completed several elements of the City's Sewer System Management Plan (SSMP) which is required by the State's new Waste Discharge Requirements for sewer collection systems. Activities completed in 2009 include surveying of several hundred manholes within the City and updates to the City's GIS system, development of a Systemwide Evaluation and Capacity Assurance Plan (SECAP), an evaluation of Fats Oils and Grease, and deployment of a new Computerized Maintenance Management System to track sewer overflows, work orders, repairs, and costs. The City has budgeted annual funds to implement the SSMP initiatives. Many of 2009's initiatives are included in this scope of work.

**Scope of Work**

Near-term and long-term objectives of the City's overall "Asset Management" program are shown on the next page. In 2009, the City will focus on "Priority 1" activities.

**Task 1- Condition Assessment**

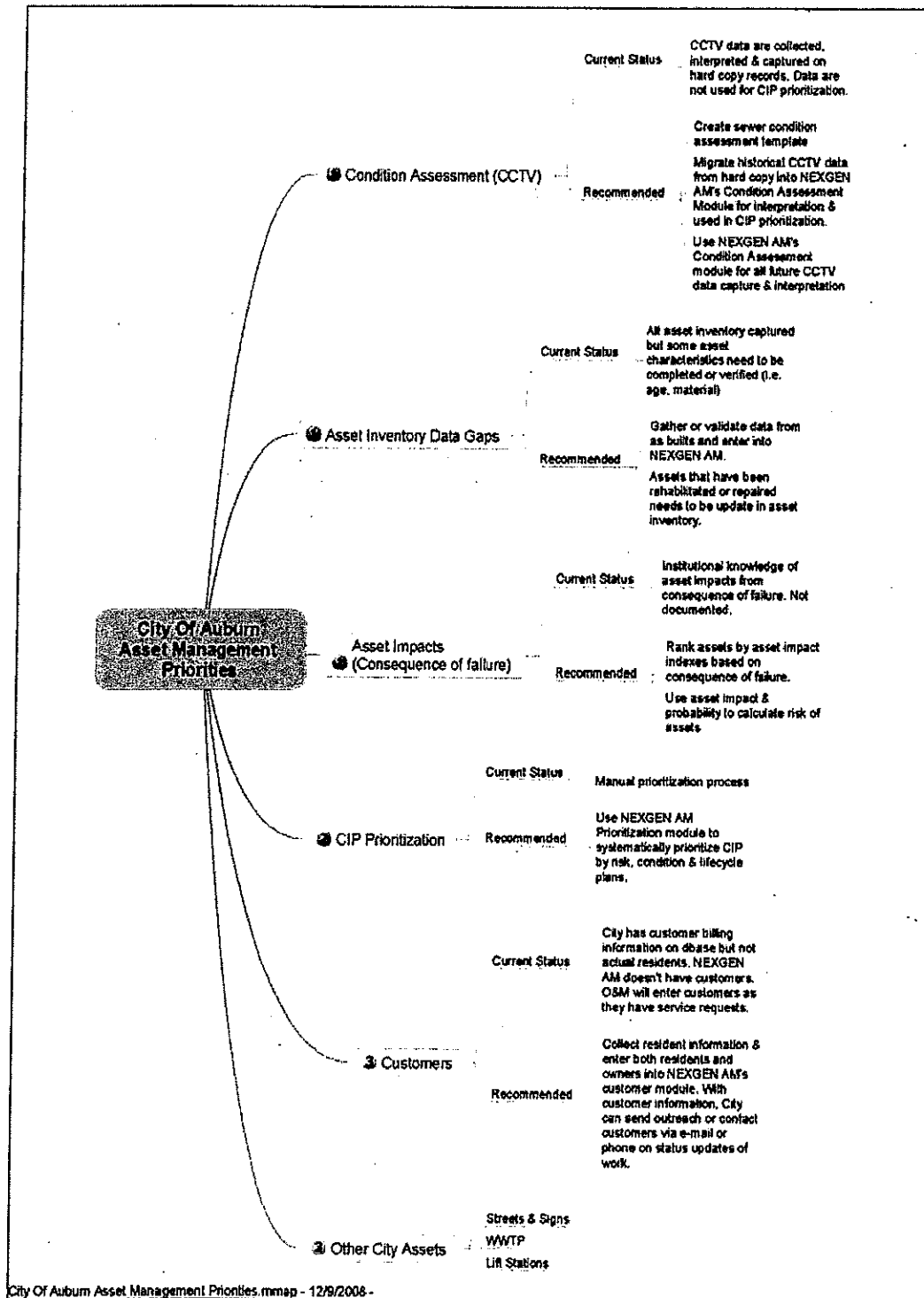
The City has an ongoing program to inspect its sewers using specialized closed circuit television camera (CCTV) equipment. In this task we will develop a program for cataloging and rating defects. The data is then input into the City's maintenance system database so that the City can use the information to prioritize its annual rehabilitation CIP.

**Task 2- System Inventory Data Gaps**

The City has its major sewer pipes on its GIS system. Many of the sewer "as-builts" do not exist due to their age. This task includes an allowance for additional surveying and migration to continue to update the system inventory.

**Task 3- Sewer Ranking**

We will work with City staff to rank the various sewers based on their consequence of failure. Consequence of failure criteria changes for each sewer pipe and include criteria such as relative impacts to customers during repairs or impacts of overflows to sensitive waterbodies or public or private facilities. We will develop a risk-based severity index that the City can use to help rank its assets and prioritize its maintenance and repair priorities. This task also include activities associated with migrating the maintenance system onto City servers.



## EXHIBIT B APPROVED FEE SCHEDULE

### Task 1: Lower Vintage Oaks Lift Station Upgrade Project

Table 1. Construction Services Budget								
Task Description	Rate (\$/hr)	Senior Engineer	Associate	Engineer	Admin	Labor	Direct Costs	Task Total
3-1 Conduct Pre-Bid Meeting, Prepare Adenda	2 addendum assumed	12	16	24	6	\$ 7,640	\$ 200	\$ 7,840
3-2 Submittal Review	24 submittals assumed	12	40	40	10	\$ 13,160	\$ 400	\$ 13,560
3-3 RFIs/ Clarifications	20 RFIs assumed	20	20	20	6	\$ 9,160	\$ 400	\$ 9,560
3-4 Site Visit and Meetings	20 meetings assumed	40	20		6	\$ 10,360	\$ 400	\$ 10,760
3-5 Inspection and Startup Testing		12	20	24		\$ 7,840	\$ 400	\$ 8,240
3-6 Prepare Record Drawings		4	16	8	10	\$ 4,520	\$ 800	\$ 5,320
Task 3 Subtotal								\$ 55,280

### Task 2: NPDES Permitting Tasks 2009

Table 1. NPDES Permitting								
Task Description	Rate (\$/hr)	Senior Engineer	Associate	PR Specialist	Admin	Labor	Direct Costs (a)	Task Total
1 Trace Pollutant Compliance	40	60			8	\$ 16,080	\$ 200	\$ 16,280
2 Prepare SRF Package & Report	48	56			24	\$ 17,920	\$ 500	\$ 18,420
3 HAW Program Updates								
Website Enhancements				25		\$ 2,250	\$ 650	\$ 2,900
Drug Collection *				10		\$ 900	\$ 1,000	\$ 1,900
School Curriculum				20		\$ 1,800	\$ 4,000	\$ 5,800
Stormwater Outreach 2008/09				20		\$ 1,800		\$ 1,800
I Pledge				6		\$ 540		\$ 540
Podcast				4		\$ 360	\$ 100	\$ 460
Community Events				4		\$ 360	City staff time	\$ 360
Advertising				5		\$ 450	\$ 1,200	\$ 1,650
News releases/editorial				6		\$ 540		\$ 540
Existing Biz Outreach plan				9		\$ 810	\$ 300	\$ 1,110
ADPS inserts				6		\$ 540	\$ 750	\$ 1,290
								\$ 53,050
(a) Includes allowances for direct costs such as printing, educational materials, mailing.								

Task 3: SSMP Implementation

Table 1. SSMP Implementation Tasks								
Task	Description	Senior Engineer	Associate	Engineer	Labor	Direct Costs	Task Total	
		Rate (\$/hr)	180	140	130			
1	Conditon Assessment		16	16	20	\$ 7,720	\$ 200	\$ 7,920
2	Data Gaps (a)		8	8	16	\$ 4,640	\$ 5,000	\$ 9,640
3	Ranking of Sewers		16	16	16	\$ 7,200	\$ 200	\$ 7,400
								\$ 24,960
(a) Includes allowance of \$5,000 for surveying of critical manholes								

**Total Task 1, 2 & 3: \$133,290**

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RESOLUTION NO. 09

RESOLUTION AUTHORIZING THE CONSULTANT AGREEMENT WITH NEXGEN  
UTILITY MANAGEMENT FOR WASTEWATER CONSULTING

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THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

That the City Council of the City of Auburn does hereby authorize the  
Director of Public Works to execute a consultant contract with NexGen Utility  
Management, Inc. for wastewater consulting.

A true and correct copy of said Consultant Agreement is attached hereto as  
Exhibit "A."

DATED: February 23, 2009

\_\_\_\_\_  
J.M. Holmes, Mayor

ATTEST:

\_\_\_\_\_  
Joseph G. R. Labrie, City Clerk

I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify  
that the foregoing resolution was duly passed at a regular session meeting of  
the City Council of the City of Auburn held on the 23<sup>rd</sup> day of February 2009  
by the following vote on roll call:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Joseph G. R. Labrie, City Clerk